IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 619 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.U.SHAH,FOOD INSPECTOR,
SURAT MUNICIPAL CORPORATION,SURAT

Versus

JHAVERI GHARI KENDRA & 3 OTHERS

Appearance:
NOTICE SERVED for Petitioner
NOTICE SERVED for Respondent No. 1
MR DJ BHATT for MR RR MARSHALL for Respondent No. 2
MR KT DAVE APP for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/03/2000

ORAL JUDGEMENT

This acquittal appeal is directed against the impugned judgment and order of acquittal dt. 26th

August, 1987 rendered by the learned Judicial Magistrate, First Class, (Municipal) Surat in P.F.A.Case No.19 of 1984. It was the prosecution case that the complainant Mr. R.U.Shah being Food Inspector of the Surat Municipal Corporation had an occasion to go to the shop of the accused no.1 who was dealing in cooking sweet items, on October 29, 1983 at around 7-30 O'clock in the morning. He purchased one and a half Kilogram of Barfi (cooking sweet item prepared from Mava) from the aluminium utensil which contained 4 Kgs. of Barfi put for sale. After following the procedure and receipt of report of the Public Analyst, he filed the complaint in question. At the conclusion of trial, the learned Magistrate, upon appreciation of evidence, came to the conclusion that no case of adulteration could be made out as contemplated under Sec.2(i-a) (a) of the Prevention of Food Adulteration Act, 1954 in so far as observance of standards was concerned. The prosecution could not point out any standards of Barfi having been fixed under the provisions of either Prevention of Food Adulteration Act or Rules made thereunder.

2. The learned Magistrate, therefore, did not accept the case of the prosecution, and acquitted the accused of the offences punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (the "Act" for short). That is how, the complainant, with the leave of this Court, is before this Court.

3. Today when the matter was called out for final hearing, the complainant did not remain present, though notice is served to him. However Mr. K.T.Dave, learned APP has argued the matter on his behalf, as he represents the State of Gujarat. I have also heard Mr. D.J.Bhatt learned advocate appearing for Mr. R.R.Marshal for the accused persons.

4. During the course of arguments, following provision of the Act was read before this Court also.

Sec.2: Definitions.- In this Act unless the context otherwise requires,-

xxx xxx xxx xxxx xxxxxx

(i-a) " adulterated" -an article of food shall be deemed to be adulterated -

(a) if the article sold by a vendor is not of the nature, substance or quality, demanded by the purchaser and is to his prejudice, or is not of the

nature, substance or quality which it purports or is represented to be :

xxx xxxx xxxx xxx xxxx xxxx xxxx xxxxxx

It is in the above context that the complaint, charge and the evidence has been read before this Court. It would broadly appear that there was no Sign-Board indicating that the Barfi in question was prepared from specified items. Even the representation as alleged in the complaint was that the item -Barfi was prepared from suger-powder (Buru) and cardamom. There was no other representation alleged to have been made to the complainant even as per the complaint. As against the aforesaid representation, it transpires in the evidence that the complainant did not utter a word about class of Barfi he wanted to purchase from the accused. He also admitted that there was no Sign-Board indicating the ingredients or substance from which the Barfi, being sold in the shop, was prepared. In that view of the matter, there being no other circumstance which could be pointed out from the evidence, conclusion of the learned Magistrate that the case did not fall under the aforesaid definition, appears to be not impeachable.

5. With regard to standards, the complainant could not point out before the learned Magistrate any prescribed standards under any of the provisions of the Act or Rules. Even before this Court, no such specific standards could be pointed out. In the above view of the matter, and for the reasons set out by the learned Magistrate, the impugned judgment and order of acquittal cannot be faulted.

6. In the result, this appeal is dismissed.

Date:03-03-2000. -----
ccshah (M.S.Parikh,J.)